BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF COMMISSIONER PEEVEY

TURN
affordable utilities
livable communities

March 10, 2008

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF COMMISSIONER PEEVEY

Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these reply comments regarding the Proposed Decision of Commissioner Peevey (PD).

If the Commission approves the California Institute for Climate Solutions in its current form, it will cement its reputation as an agency whose *raison d'etre* has become "we fund because we can" or, perhaps, "we fund because they asked us to." The proposal on the table is a commitment of $600 million of ratepayer funds, a staggering amount in anyone's view, one would think. Yet the proposal fails to address perhaps the most fundamental question – in light of recent Commission experience with a similar attempt to create an autonomous body charged with implementing inarguably important public policy goals, under what authority does the Commission claim to proceed here? Instead, we see things like "accountability to ratepayers" achieved in part by having a representative from an investor-owned utility (that is, PG&E, Edison, or the Sempra Utilities) on the Governing Board.[1] Imagine our relief.

These reply comments focus on the critical point raised in the UCAN opening comments regarding the Commission's experience with the California Board for Energy Efficiency (CBEE) and the all-too-predictable calls from the oil companies and other industrial customers seeking to pawn off more of the $600 price tag on residential customers. As stated in our initial comments from November 2007, the correct amount to collect in rates from ANYONE is zero, at least at this juncture. Even if the Commission fears that the Legislature would not fund such an initiative out of tax

[1] Proposed Decision, p. 44.

revenues or the General Fund at this time, surely it does not doubt that the merits of the proposal would be met with a legislative granting of authority for the Commission to proceed with ratepayer funding?

On the other hand, if the Commission thinks that it could not convince the state's elected officials to sign off on this proposal, maybe it needs to come up with a different proposal, perhaps one that focuses on substantial non-ratepayer funding, as Greenlining Institute suggested.[2] Or perhaps one that uses funding collected from the auction of greenhouse gas credits or some other alternative revenue source to mitigate the direct impact on IOU ratepayers. In any event, the Commission owes it to the ratepayers of California's IOUs to come up with something that first obtains legislative support before committing those ratepayers to spend hundreds of millions of dollars on an initiative that, if voted out in its current form, will seem more a product of ego than logic. The subject matter is too important, and the dollar figure too high, to leave it to a majority of five votes.

Should the Commission decide to embrace the CICS in its current form, it needs to at the very least ensure that the associated costs are assigned fairly among customer groups and, to this end, reject the various calls for something other than the equal-cents-per-unit approach called for in the PD.

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[2] Greenlining Comments, pp. 1-2. Rather than apply the proposed 3:1 funding ratio to $60 million per year collected from rates (the basis for Greenlining's point that $600 million from ratepayers would produce $1.8 billion of additional funding), TURN submits that at least initially the ratio should be applied to a lower base (perhaps $15 million per year from ratepayers, to produce the targeted $60 million that the CICS proposal envisioned).

I. The Commission Must Directly Address Questions Regarding Its Authority to Fund A Separate Entity Such As The CICS.

Utility Consumers Action Network (UCAN) performed an important service when it reminded the Commission and other parties to this rulemaking that a prior attempt to use rates to fund an outside entity for a similarly unassailable purpose failed at least in part due to the Commission's inability to gain legislative approval for that attempt. The CBEE experience cited in UCAN's comments should be one that no one wants to replicate. Indeed, the Commission made this very clear when it discussed that experience in a recent decision. In D.07-01-055, the decision on the administrative structure for energy efficiency, the Commission devoted five pages to a discussion of the CBEE experience and how, in the end, several unanticipated obstacles proved to be insurmountable.[3]

TURN finds nothing in the PD that even acknowledges the Commission's past experience with an attempt to create an autonomous body to spend ratepayer funds to achieve a particular outcome. Before the Commission approves the CICS model set forth in the PD, it must at a minimum satisfy itself that the circumstances present here do not promise a likely repeat of the CBEE debacle. Better yet, it should obtain the necessary legislative support and sign-off up front, rather than find itself in a position next year or the year after where it will need to desperately attempt to backfill hole that exists because of the absence of such support and sign-off. If the CICS model is as good an idea as its proponents seem to believe it is, obtaining the Legislature's imprimatur should be relatively straightforward, even for a model that involves funding through IOU rates.

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[3] D.07-01-055, pp. 31-36.

Leaving it for the courts to resolve whether CICS is so similar to the original CBEE model that it warrants the same outcome practically invites a judicial challenge to this program should the Commission approve it in its currently proposed form.

II. The Commission Should Reject Calls For A Different Cost Allocation.

As one could have predicted, nearly all of the usual suspects come out of the woodwork to bemoan the proposed cost allocation on an equal-cents-per-unit basis.[4]

Among energy utility customers, greenhouse gas production is tied directly to the number of units of electricity or natural gas that are produced for and consumed by each customer, period. The number of poles, feet of wire, distributors and transformers, gas mains and pipelines required to serve one customer or the other has virtually nothing to do with the amount of greenhouse gas is associated with serving that customer. Therefore, the allocation of the costs of the CICS initiative should be based on the units of energy consumed, not the amount of investment or other costs associated with delivering those units to the customer. An equal-cents-per-unit allocation achieves just that type of allocation.

PG&E's suggestion that the commodity costs for both core gas and bundled electric service should be left out of the allocation calculation has it precisely backward. It is the commodity being consumed that triggers greenhouse gas production. Removing the costs associated with the commodity from the calculations for purposes of allocating the CICS costs is counter-intuitive and patently results-driven.

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[4] See Comments of California Manufacturers and Technology Association (CMTA); the oil companies (Energy Producers and Users Coalition, Indicated Producers, and Western States Petroleum Association), the Sempra Utilities and PG&E.

Finally, the rather oily argument[5] that since TURN argues that the program's costs should be funded through taxes, the Commission should attempt to achieve an allocation similar to how tax revenues are allocated among residential and non-residential taxpayers may represent a new low. If the CICS costs are funded through general fund revenues, it may well be true that there would be a different inter-class allocation as compared to funding the program on an equal-cents-per-unit basis through rate revenues. Whatever beneficial effect that might have for the oil companies and their friends, though, would not come entirely out of consumers' hides – at least part of the impact would be offset by the contributions that would come from businesses served by municipal and public-owned utilities in the state. More importantly, though, the Commission's task is to determine the appropriate way to allocate these costs in rates, not taxes. And if these costs are to be collected in energy utility rates, then allocating them based on the amount of energy customers' greenhouse gas emissions is entirely logical and appropriate.

March 10, 2008

Respectfully submitted,

/S/
Robert Finkelstein
Legal Director

[5] EPUC/IP/WSPA Comments, pp. 3-5. The oil companies go so far as to cite as authority for their position the testimony that PG&E and the Sempra Utilities have submitted in A.07-12-006, testimony that has not yet been the subject of rebuttal testimony or cross-examination. TURN suspects that the oil companies cite it now for fear that there will be little left to the utilities' position once anyone starts taking a critical look at it.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On March 10, 2008, 2008 I served the attached:

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on all eligible parties on the attached lists to **R.07-09-008**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this March 10, 2008, 2008, at San Francisco, California.

/S/

Larry Wong

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